

Chief, Marine Mammal Conservation Division
Office of Protected Resources, NMFS (F/PR2)
1315 East-West Highway
Silver Spring, MD 20910

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Ref: Authorization for Commercial Fisheries Under the Marine Mammal Protection Act of 1972; ZMRG

The Whale and Dolphin Conservation Society (WDCS) welcomes the opportunity to comment on the proposed definition of the Zero Mortality Rate Goal (ZMRG). We are pleased that NMFS has chosen to employ Option 1 as the insignificance threshold as we believe that of the three options offered, this option will afford the greatest level of protection for those marine mammal populations impacted by commercial fisheries. Further, we were pleased to see that NMFS was supportive of the use of the minimum population estimate (N_{min}) as the estimate of abundance used to calculate PBR for affected stocks, as again we believe that this will afford a greater scale of protection; such usage we also believe to be more in line with Congressional intent under the MMPA.

As we stated in our comments last September, we believe that the ZMRG should be taken to mean the implementation of a precautionary approach to marine mammal management and that in taking action to protect marine mammal populations, any loss of, or potential harm to, such animals should be avoided. We hold to our belief that any human-caused marine mammal mortality is undesirable and the ideal objective of any fisheries management plan should be to work to eliminate such loss.

We note that in its comments NMFS stated that, "The legislative history of the ZMRG clearly expresses the ideal that any unnecessary mortality of marine mammals should be avoided if feasible. Furthermore, the MMPA specifically states that reducing mortality and serious injury to PBR levels is only the short-term goal of a TRP, and reducing mortality and serious injury to levels consistent with the ZMRG, taking into account listed factors, is the long-term goal of a TRP." and also that, "Eliminating loss of marine mammals incidental to commercial fishing is an ideal objective. The legislative history of the MMPA is reasonably clear that achieving zero mortality and serious injury is not likely, but should remain the ideal objective."

In light of these comments indicating that the ideal objective of the MMPA would be a continuing effort to avoid the unnecessary mortality of marine mammals in commercial fisheries, with an ideal objective of eliminating such losses, we are concerned that NMFS seems to take a contradictory stance in allowing the ZMRG to become an upwardly moving target if and when marine mammal populations increase. ("As long as the mortality and serious injury rate [as a function of population size] decreased, an increase in the number of marine mammal deaths per year would still be consistent with the MMPA's goal of \square approaching a zero

mortality and serious injury rate."")

We disagree with this approach, and also believe that even if a fishery has achieved ZMRG target levels of incidental mortality and serious injury, further reduction in mortality rates should not be precluded. Continual progress in reducing and avoiding incidental mortality and serious injury is something that should be encouraged for all fisheries, and we underscore our view that Congressional intent with regards to the MMPA is, as NMFS stated, reasonably clear that achieving zero mortality... should remain the ideal objective.

With regards to the comments on the IDCPA, Congress not only established an overall dolphin mortality limit, it also set stock-specific dolphin mortality limits. We reiterate our belief that these limits were put into place, and became binding, irrespective of the current state of technological development. Fishermen in the ETP were required to meet certain goals, and to continue to ratchet down mortality towards zero regardless of economic or technological limitations. Congressional intent was rather that the establishment of quantifiable mortality limits that approached biologically insignificant levels were to be viewed as both a mechanism and an incentive to encourage commercial fisheries to further reduce marine mammal mortality in order to move toward an ultimate goal of eliminating mortality.

In one section NMFS states, "[we are] aware that the MMPA contains the goal of eliminating mortality incidental to purse seine fisheries for yellow-fin tuna in the ETP. There is, however, no required mechanism to achieve this goal..." However, in a later response, NMFS states that it is proposing stock specific quantifiable thresholds and that, "the proposed rule to implement the ZMRG as described in MMPA section 118 is similar to the IDCPA, which established stock-specific dolphin mortality limits as an incentive to further reduce incidental mortality and serious injury of dolphins incidental to the purse seine fishery for yellowfin tuna in the ETP." WDCS believes that, in enacting the IDCPA, Congress distanced itself from a definition of ZMRG that was solely equated with technological advances, and that NMFS should not restrict the proposed definition of ZMRG for US commercial fisheries on the basis of "feasible technology".

WDCS holds that Congress would not wish to see the ZMRG used as a target from which there will be no improvement, but rather that it serve as an initial mechanism by which means mortality and serious injury levels can be improved. It is our view that ZMRG should be used within the TRPs to encourage the development of risk-averse fishing techniques, and that it should not allow for any increase in the serious injury and mortality for marine mammals in a given fishery. While the use of Option 1 and Nmin are highly precautionary in their approach to fisheries management, we find the proposed "upward sliding scale" for ZMRG to be at odds with Congressional intent. We also believe that the legal interpretation of the MMPA consistently has been such that the protection of marine mammals in a fishery is paramount.

We remain concerned with the lack of adequate data upon which to base stock assessments, and welcome NMFS' intention to place a high priority on collecting the data necessary to develop and implement the TRPs. Because of a lack of resources, there are a number of fisheries about which we know little. We concur with NMFS that adequate information upon which to base a TRP and to evaluate its success is a "vital part of the regime to govern interactions between marine mammals and commercial fishing operations", and we hope that we can help NMFS to seek adequate funding for its work in this area.

We thank you for this opportunity to comment on the proposed definition of ZMRG.

Sincerely,

Kathleen O'Connell
Whale and Dolphin Conservation Society-US